

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOTICE OF PROPOSED RULEMAKING *

APPROPRIATE REGULATORY TREATMENT *

FOR BROADBAND ACCESS TO THE

INTERNET OVER CABLE FACILITIES * C.S. DOCKET NO. 02-52

COMMENTS OF THE CITY OF MOBILE, ALABAMA

The City of Mobile ("City") is an Alabama municipal corporation in which the state has vested a portion of its sovereign power for the protection of the health, safety, and welfare of its citizens. The City supports the comments of the Alliance of Local Organizations against Preemption (the "Alliance") and like the Alliance, believes that cable companies must be regulated in their provision of both cable and non-cable services and that revenues derived from the provision of non-cable services should be subject to the same franchise fees charged for cable service.

The Status of Cable Modem Service in Mobile. Mobile's population of approximately 250,000 is served by Comcast Cable, which has approximately 54,000 subscribers. Our citizens subscribe to both cable and cable modem service through a 750 Mhz hybrid fiber coax cable system that was

upgraded in 1999. Cable modem service has been available since June 2000; video on demand was offered in 2001.

How We Regulate Cable Modem Service. Because our City's size does not warrant a full time cable administrator, the City contracts with a outside firm to handle complaints, to analyze the inevitable annual rate increases, and to keep the City abreast of national developments.

We regularly receive complaints from customers about cable services, including cable modem services. From the consumer's perspective, there is no difference between cable and non-cable services. Cable customers simply want the operator to solve their problem.

Separating the two types of services for purposes of regulation and/or fee calculation are not only burdensome for the consumer and the local franchising authority, it presents a nearly impossible task. For example:

- Cable modem service is marketed jointly with cable service;
- Complaints about promotional practices often apply to both services;
- Customers receive one bill for cable modem and cable services, so billing complaints involve both;

- Customer service calls go to a single number so telephone answering policies affect both;
- Customers may call a single location to schedule installation of cable and cable modem service.

As a result, when one service has problems, the quality of the other service can be affected. Comcast customers are advised monthly on their bill to call the City of Mobile with complaints. Comcast does not tell the customer that protections accorded with respect to cable service do not apply to cable modem service.

The Financial Consequences. Comcast's annual franchise fee payment to the City is calculated as three percent of gross revenues. This rate translates into more than one million dollars annually, and is the same rate charged gas and electric utilities.

Comcast has always included cable modem revenues in the calculation of its franchise fees. According to Comcast, cable modem service is one of the fastest growing areas of its business. Comcast's decision last spring to unilaterally deduct cable modem revenues from the calculation of its franchise payment has had a serious adverse impact on the City's budget. Payments from Comcast

are down 20% and these payments will continue to shrink as Comcast's revenues attributable to broadband increase.

Yet there will be no corresponding reduction in demands from citizens for the myriad services expected of local government, including traditional services like police and fire protection for residents and businesses, and new services such as e-government initiatives, televised council meetings and library-based broadband for all citizens.

To summarize, Comcast and other providers use the public right of way to provide both cable and non-cable services. Just like other utilities, cable operators should pay franchise fees based on all revenues derived from this use. Drawing a distinction between the types of service makes no sense from anyone's perspective--the consumer, the operator or the local government--and will virtually guarantee confusion for our citizens.

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